

DOCKET FILE COPY ORIGINAL

ORIGINAL

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

RECEIVED

AUG 23 1995

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )

Streamlining the International )  
Section 214 Authorization and )  
Tariff Requirements )

IB Docket No. 95-118

**COMMENTS OF  
SHAW, PITTMAN, POTTS & TROWBRIDGE**

The law firm of Shaw, Pittman, Potts and Trowbridge ("SPPT") submits these comments in support of all of the Commission's streamlined procedures proposed in its Notice of Proposed Rulemaking, released July 17, 1995 ("NPRM"). SPPT represents carriers who are subject to the Section 214 Authorization Process and to the FCC tariff requirements. SPPT believes that the NPRM proposals are beneficial to the international telecommunications industry and to the public served by that industry. These streamlined procedures are in the public interest and should be adopted forthwith.

**I. STREAMLINED PROCEDURES SHOULD BE ADOPTED**

The new International Bureau, by its actions, has confirmed the Commission's wisdom in consolidating its international and satellite regulatory policies into this new organization. The International Bureau has swiftly taken hold by breaking pre-existing logjams, applying sensible and pragmatic procedures in matters within its jurisdiction, and formulating several forward-looking pending NPRMs, including the instant one. The International Bureau has, in its brief existence, shined forth as a paragon of excellence in enlightened government regulation.

No. of Copies rec'd  
List A B C D E

25

We enthusiastically support all of the NPRM's proposals streamlining and expediting international Section 214 authorizations, and simplifying international Section 214 applications.<sup>1/</sup> The proposed automatic grant procedures for nondominant carrier applicants are especially meritorious. We also endorse streamlined tariffing requirements for international nondominant resale and facilities-based carriers, including, (1) permitting tariffs to become effective on not less than one day's notice, (2) relaxing the form and content requirements of tariffs and transmittal letters, and (3) eliminating the need for any economic tariff support material.

## **II. PROPOSED CLARIFICATIONS**

### **A. Automatic Grant Procedures For Nondominant Facilities-Based Carriers**

The automatic grant procedures contained in proposed Section 63.12 appear unduly, and perhaps unintentionally, restricted under proposed Section 63.12(c)(1). This provision appears to negate automatic grants for facilities-based carriers who have an affiliation with a foreign carrier. There are benign categories of foreign affiliations that should not be enmeshed in the restriction in proposed Section 63.12(c)(1). An applicant nondominant U.S. carrier might have an affiliate in Country A which does not have the ability to discriminate against unaffiliated U.S. international carriers through control of bottleneck services or facilities in Country A. The applicant nondominant carrier would so certify pursuant to proposed Section 63.XX(h)(7) on pages 6-7 of Appendix A of the NPRM. In that case, there would be no public interest benefit from depriving the applicant nondominant U.S. carrier of automatic grant privileges.

---

<sup>1/</sup> We see no need for the Bureau to create a Section 214 application form (NPRM, ¶ 50). The NPRM proposes to reduce significantly the information required in Section 214 applications. Applicants will have greater flexibility without being constricted into a printed form which may not anticipate all future variations of applications.

Accordingly, we propose a clarification to proposed Section 63.12(c)(1) , with the new language highlighted by underscoring.

§ 63.12(c). The streamlined processing procedures provided by paragraphs (a) and (b) of this section shall not apply where:

(1) The applicant seeks authority under § 63.XX(e)(1) for global Section 214 authority to operate as a facilities-based carrier and the applicant has an affiliation with a foreign carrier which owns or controls bottleneck services or facilities in a country to which the applicant seeks authority to provide service (i.e., a destination country).

If the Commission elects for good reason not to go as far as proposed above, alternatively the words, "telecommunications facilities," could be substituted for the words, "bottleneck services or facilities." Either alternative would be preferable to the categorical denial of the beneficial automatic grant procedure to a nondominant U.S. carrier applicant with a benign foreign affiliate.

#### **B. Automatic Grant Procedures For Nondominant Resale Carriers**

A nondominant U.S. carrier could be facilities-based on the U.S. side, and a reseller of a foreign carrier's facilities on the foreign side.<sup>2/</sup> There would be no public interest benefit in requiring such U.S. carrier to lease the U.S. half circuit from another U.S. carrier and, thus, leave its owned circuit to lie idle. Nevertheless, there is an inference, perhaps unintended, in proposed Section 63.12(c)(2) that a U.S. nondominant resale carrier applicant might be deprived of the benefit of the automatic grant procedure if it used its own U.S. half circuit in connection with a leased foreign half circuit to provide resale service between the U.S. and that foreign country.

---

<sup>2/</sup> The Commission has approved such an arrangement in MCI Telecommunications Corporation, DA 95-517, March 21, 1995.

Accordingly, we propose a clarification to proposed Section 63.12(c)(2), with the new language highlighted by underscoring.

§ 63.12(c). The streamlined processing procedures provided by paragraphs (a) and (b) of this section shall not apply where:

(2) The applicant has an affiliation within the meaning of § 63.XX(h)(1) with the U.S. facilities-based carrier whose international switched or private line services the applicant seeks authority to resell (either directly or indirectly through the resale of another reseller's services). This provision shall not apply when the applicant proposes to use its own U.S. half circuit in connection with a leased foreign half circuit to provide resale service between the U.S. and the foreign country wherein the leased foreign half circuit terminates.

C. Section 214 Applications Submitted  
On Computer Diskettes

We support proposed Section 63.53(b) which permits the submission of Section 214 applications on computer diskettes, although we wonder whether the elimination of a hard copy is advisable. We question whether diskettes would be convenient to members of the public who wish to monitor Section 214 application filings, or to government agencies (federal and state) who are entitled to be served with Section 214 applications.<sup>3/</sup> It might be advisable for the Commission to rethink its diskette proposal or to delegate to the International Bureau the authority to modify the diskette proposal when it compiles the "filing manual" called for in proposed Section 63.53(b).

### III. PETITIONS TO DENY

The meritorious expanded automatic grant procedures, proposed in Section 63.12 (a) and (b), could be frustrated by unfounded or frivolous petitions to deny. According to proposed

---

<sup>3/</sup> Section 214(b) calls for certain applications to be served upon specified federal and state officials.

Section 63.12(c)(5), a formal petition to deny would automatically negate the automatic application grant procedures.

Ordinarily, the most effective way to combat unfounded or frivolous petitions to deny is to grant the targeted applications promptly, as the International Bureau has commenced doing. Even with such expeditious Bureau rulings, however, it is highly unlikely that the applicant could commence operations on the 36th day after the public notice as contemplated in proposed Section 63.12(b). Thus, the public benefits of the expanded automatic grant procedures could be defeated by denial petitions. Moreover, the petitioners would be rewarded for their non-meritorious filings by the delay of the commencement of applicants' services. Also, the adjudication of denial petitions, no matter how unfounded they are, is burdensome and time-consuming for the International Bureau's Staff.

We submit for the Commission's consideration several remedial proposals. First, consideration should be given to the assessment of filing fees on FCC licensees' petitions to deny. This proposal is not intended to penalize licensee-petitioners but rather to require them to reimburse the Government for the efforts expended by the FCC Staff in adjudicating the denial petitions.<sup>4/</sup> Second, Section 63.52(c) of the Rules could be amended by requiring additional disclosures by petitioners, verified by affidavit. For example, a petitioner could be required to show: (1) precisely how it would be harmed by a grant of the target application, and how it would benefit from a denial or delay of such application; (2) specifically how petitioner serves or plans to serve the country or countries covered by the target application, including a

---

<sup>4/</sup> We believe that the overwhelming number of denial petitions are filed by FCC licensees or other entities subject to FCC jurisdiction, rather than by consumers or other members of the public.

representation as to whether petitioner's transmission system can physically reach or serve the entire area covered by the target application; (3) a reference to, and description of, the contracts or arrangements petitioner has to serve the country or countries covered by the target application (proprietary information could be filed with a request for confidentiality, subject to the Staff's ruling upon the validity of such request); and (4) a detailed description and itemization of services being provided, and of pending customer requests for such services, by the petitioner to the country or countries covered by the target application (subject to the aforesaid confidentiality procedures). The foregoing proposal is intended to require full disclosure by the petitioner to better enable the FCC Staff to adjudicate the petition.

### III. CONCLUSION

As indicated at the outset, we enthusiastically support all of the NPRM's proposals. We believe, however, that the adoption of our proposed clarifications would make these proposals more effective consistent with what we perceive to be the objectives of the FCC drafters. We look forward to the prompt adoption of the proposed streamlined procedures which are decidedly in the public interest.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By:

  
Robert E. Conn  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8093

August 23, 1995